

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY	§	
COMMISSION,	§	
	§	
Plaintiff,	§	Civil Action No. SA-04-CA-0573-WWJ
v.	§	
	§	
PASS & SEYMOUR, INC. and	§	
KENMARK GROUP, LTD.,	§	
	§	
Defendant.	§	

CONSENT DECREE AS TO DEFENDANT PASS & SEYMOUR

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, Pass & Seymour, Inc. ("Pass & Seymour"). The EEOC initiated this action under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of sex, male, and to provide appropriate relief to a class of males ("class members") who allegedly were adversely affected by these practices. Pass & Seymour denies the allegations set forth in the action, and further denies that it has acted in violation of law. The EEOC and Pass & Seymour desire to settle this action, without the risks, uncertainties and expenses of continued litigation, pursuant to the terms set forth in this Consent Decree. By entering into this Consent Decree, Pass & Seymour makes no admission of liability. The EEOC and Pass & Seymour stipulate and agree to the terms of this Consent Decree as final and binding to resolve and settle in full all issues raised in the action and Commissioner's Charge No. 360A11724 ("Charge"), including any and all claims brought pursuant to the Charge or based on the allegations set forth in the action with respect to hiring for Assembler positions at Pass &

Seymour's San Antonio, Texas, facility prior to the entry of this Consent Decree. Unless specifically stated otherwise, this Consent Decree only applies to hiring for Assembler positions at Pass & Seymour's San Antonio, Texas, facility prior to the entry of this Consent Decree.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and the parties, venue is proper, and all administrative prerequisites to the EEOC's filing of this action have been met.

2. The EEOC agrees to discontinue and dismiss the action against Pass & Seymour. By entering into this Consent Decree, the EEOC hereby releases and forever discharges Pass & Seymour, its corporate parents and affiliates, predecessors, successors and assigns, and any and all of its past and present employees, officers, directors, shareholders and agents, from any and all claims, causes of action, suits, proceedings, damages, liabilities, and demands raised in the action or Charge regarding Pass & Seymour's action or inaction in the recruiting, screening, interviewing, rejecting, selecting and/or hiring of individuals for Assembler positions at the San Antonio, Texas, facility between January 1, 1997, and the date this Consent Decree is entered by the Court. Exhibit "1" is a list of male class members who applied for Assembler positions.

3. Neither this Consent Decree nor its terms shall constitute an admission to or evidence of liability or any violation of the law by Pass & Seymour, and may not be used as evidence of liability or violation of the law in any proceeding involving Pass & Seymour. The parties have entered into this Consent Decree to avoid the delay, expense and uncertainty of further litigation.

4. Nothing contained in this Consent Decree will prohibit the EEOC from accepting and/or processing charges of discrimination filed by or on behalf of any individuals against Pass

& Seymour. The EEOC agrees that it will not issue any right-to-sue notices based on discriminatory practices regarding hiring for Assembler positions at Pass & Seymour's San Antonio, Texas facility prior to the entry of this Consent Decree as alleged in the action or Charge.

5. This Decree shall remain in effect for three (3) years from the date of entry by the Court, and shall expire at the end of the 3-year term without further action by the Court or the parties to effect the Consent Decree's termination. This Court shall retain jurisdiction of the action only for the purposes of enforcing this Consent Decree. At the expiration of the Consent Decree the parties will submit to the Court a Joint Stipulation dismissing the action against Pass & Seymour with prejudice, each party to bear its own costs and fees.

6. During the term of this Consent Decree, Pass & Seymour shall be enjoined from engaging in gender discrimination with regard to recruiting, interviewing, selecting, rejecting, and/or hiring individuals to fill Assembler positions at any of its facilities.

7. Pass & Seymour shall post the notice set forth in Exhibit "2" ("Notice") to this Consent Decree regarding its policies, practices, and intent to comply with Title VII, where Pass & Seymour customarily posts employee notices at any facility which employs Assemblers. The Notice shall be posted within ten (10) business days of the entry of this Consent Decree, and shall remain posted for the duration of this Consent Decree.

8. During the term of this Consent Decree, Pass & Seymour shall adopt a statement reflecting its commitment to maintaining a hiring program that does not discriminate on the basis of gender.

9. Within ninety (90) days of the entry of this Consent Decree, labor and employment attorney(s) of BOND, SCHOENECK & KING, PLLC ("Pass & Seymour's legal

counsel"), shall provide six (6) hours of Equal Employment Opportunity training to Pass & Seymour Human Resources and other management employees (hereinafter, collectively, the "Management Employees") who are involved in the recruiting, screening, interviewing, selecting, rejecting and/or hiring of individuals for Assembler positions at any Pass & Seymour facility that employs Assemblers. The training will include information regarding Title VII's prohibitions against discrimination on the basis of gender, including performance based on stereotypical notions of gender-related job performance, and will reaffirm Pass & Seymour's commitment to non-discriminatory hiring for Assembler positions. Pass & Seymour's legal counsel will conduct similar training during each year of this Consent Decree for those Management Employees (i) hired, transferred or promoted during the preceding twelve (12) months into positions responsible for the screening, interviewing, selecting, rejecting and/or hiring of individuals for Assembler positions, and (ii) who have not received the training during the term of this Consent Decree. Within ten (10) days after the initial and each annual training program, Pass & Seymour shall provide the EEOC with written confirmation that the training has been completed and a copy of the training syllabus and materials. No less than ten (10) days before each training program, Pass & Seymour may request pre-approval from the EEOC of the syllabus and materials to be used. Pass & Seymour shall provide a list of individuals, identified by name and title/position, who attended each training program and the date of their attendance.

10. Within ten (10) days after entry of this Consent Decree by the Court, Pass & Seymour shall mail an Acknowledgment of Interest and Release (the "Acknowledgment") and cover letter, copies of which are attached as Exhibit "3," to each individual at every address identified in Exhibit "1," who shall have sixty (60) days from the date of the Acknowledgment mailing to execute the Acknowledgment and deliver the executed form to Pass & Seymour, c/o

BOND, SCHOENECK & KING, PLLC, One Lincoln Center, Syracuse, New York 13202-1355. Pass & Seymour shall re-mail any notices that are returned with a forwarding address. Any individual who does not timely execute and return the Acknowledgment shall be excluded from the class. Pass & Seymour shall provide the EEOC with copies of the signed Acknowledgments. Pass & Seymour shall pay a pro rata share to each individual identified on Exhibit "1" who executes the Acknowledgment and returns it to Pass & Seymour within sixty (60) days of the Acknowledgment mailing, for a total amount of \$475,000.00 (the "Funds"). Pass & Seymour shall, within ninety (90) days from the date of the Acknowledgment mailing, mail payment to all individuals who timely executed and delivered the Acknowledgment to Pass & Seymour. Pass & Seymour shall make tax withholdings from the pro rata share determined to be payable to each class member, and will issue a Form 1099 to each class member receiving payment. A copy of each payment check shall be provided to the EEOC. Any returned checks shall be re-mailed by Pass & Seymour within one-hundred fifty (150) days after the date of the Acknowledgment mailing to the forwarding address provided to Pass & Seymour by the U.S. Postal Service.

If any amount of the Funds is not successfully delivered to class members, whether through failure of check delivery or the check not being cashed within two-hundred (200) days after the date of Acknowledgment mailing (hereinafter the "Residual Amount"), the class member shall forever forfeit any and all right to his share of the settlement payment, and Pass & Seymour will immediately stop payment and void undeliverable/uncashed checks. By or before two-hundred thirty (230) days after the date of the Acknowledgment mailing, Pass & Seymour will donate the Residual Amount to the Equal Rights Advocates, 1663 Mission Street, Suite 250, San Francisco, CA 94103.

11. Nothing in this Consent Decree is intended to confer upon any person or entity other than the EEOC or Pass & Seymour the right to seek enforcement of this Consent Decree and/or of any of the terms contained herein, and no class member or any individual excluded from the class (including but not limited to individuals not listed in Exhibit 1, and individuals excluded for having failed to timely sign and deliver an executed Acknowledgement to Pass & Seymour) is authorized to bring any proceeding to enforce this Consent Decree and/or any of the terms contained herein.

12. All documents required to be forwarded to the parties or their counsel shall be mailed, delivered or faxed to counsel at the following addresses:

TO THE EEOC:

Robert B. Harwin, Regional Attorney
Equal Employment Opportunity Commission
San Antonio District Office
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78229-3555
Telephone: (210) 281-7643
Facsimile: (210) 281-7669

TO PASS & SEYMOUR'S LEGAL COUNSEL

David M. Ferrara
BOND, SCHOENECK & KING, PLLC
One Lincoln Center
Syracuse, New York 13202-1355
Telephone: (315) 218-8000
Facsimile: (315) 218-8100

13. The parties to this Consent Decree shall bear their own costs and attorney's fees incurred in this action as of the date of entry of this Consent Decree by the Court. The parties agree that, pursuant to Section 706(k) of Title VII, 42 U.S.C. Section 2000e-5(k), there is no "prevailing party" in this action or proceeding.

The Clerk shall furnish a copy hereof to each attorney of record.

SO ORDERED.

Signed this _____ day of _____, 2005.

WILLIAM WAYNE JUSTICE
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

DAVID M. FERRARA
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TIMOTHY H. BANNWOLF
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106 South St. Mary's Street, Suite 800
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Telephone: (210) 226-1166
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ATTORNEYS FOR DEFENDANT
PASS & SEYMOUR, INC.

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District of Columbia Bar No. 076083

JUDITH G. TAYLOR
Supervisory Trial Attorney
Texas State Bar No. 19708300

EDWARD JUAREZ
Trial Attorney
Texas State Bar No. 24014498

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78229
Telephone: (210) 281-7613
Facsimile: (210) 281-7669

ATTORNEYS FOR PLAINTIFF

Exhibit 2

Pass & Seymour, Inc., is committed to hiring applicants for employment without regard to their sex, race, color, religion, age, national origin, or disability. Pass & Seymour will not tolerate discrimination which violates state or federal laws or local ordinances, including failing to hire individuals on account of their sex, race, color, creed/religion, age, national origin, or disability.

Pass & Seymour in particular will not tolerate gender discrimination in hiring such as for example discriminatorily preferring women and excluding men in hiring for Assembler positions.

If any employee believes he or she has been discriminated against, the employee should immediately notify his/her supervisor or manager. If the complaint involves someone in the employee's direct line of supervision, the employee is encouraged to speak directly with the Human Resources Manager or the Vice-President/General Manager. Employees may also contact the Equal Employment Opportunity Commission at 1-800-669-4000 (TTY: 1-800-669-6820).

Pass & Seymour will take appropriate corrective action, up to and including termination, based on the circumstances involved, against any employee who violates Pass & Seymour's policies against discrimination.

Exhibit 3
Date

Name
Address
City, State Zip

Dear Mr. _____,

The Equal Employment Opportunity Commission ("EEOC") and Pass & Seymour, Inc. ("Pass & Seymour") are parties to a lawsuit pending in the U.S. District Court in San Antonio, Texas. The lawsuit involves a claim that Pass & Seymour did not hire a class of males for Assembler positions at the facility located in San Antonio because of their gender. Pass & Seymour denies the EEOC's claim and the District Court has made no decision in this case. Nevertheless, the EEOC and Pass & Seymour have entered into a settlement agreement (Consent Decree).

It is our understanding that you applied for an Assembler position with Pass & Seymour in San Antonio, Texas. The parties are in the process of identifying potential class members who desire to be included in the settlement of this lawsuit and thus receive a portion of the money damages. In order to participate, eligible class members must complete, sign, and timely return the attached Acknowledgment of Interest and Release. The payment amount that each class member receives will be based on the number of eligible class members who timely respond to this letter and sign the Acknowledgment of Interest and Release.

If you desire to participate in this settlement, please complete the enclosed form and return it in the envelope provided, and be certain to include your address.

In order to be included in the settlement, the enclosed form must be received at the office listed above not later than 5:00 p.m., E.D.T., on or before _____, 2005. Any form or requested information received after 5:00 p.m. on _____, 2005, will not be accepted or included in the settlement.

If you have any questions about this letter, please contact Eduardo Juarez, EEOC Trial Attorney, at (210) 281-7613.

Very truly yours,

BOND, SCHOENECK & KING, PLLC

David M. Ferrara
Paul Limmiatis

Exhibit 3

Acknowledgment of Interest and Release

SEND TO:

BOND, SCHOENECK & KING, PLLC
One Lincoln Center
Syracuse, New York 13202-1355

ATTN: David M. Ferrara
Paul Limmiatis

RE: PASS & SEYMOUR, INC.

Full Name: _____
(print)

Current Address: _____
(include zip code)

Social Security Number: _____

I applied for an Assembler position with Pass & Seymour in San Antonio, Texas. I desire to be included in the settlement of the lawsuit between the Equal Employment Opportunity Commission and Pass & Seymour, Inc. I understand that in return for the monetary amount payable to me under this settlement, I release Pass & Seymour from any claims alleging gender discrimination regarding my application or hiring for any Assembler position at Pass & Seymour's San Antonio, Texas, facility prior to the entry of the Consent Decree.

This form must be signed, and received by Pass & Seymour no later than 5:00 p.m., E.S.T. on _____, 2005.

Signature

Date

Your response will not be processed unless all of the above information is completed.